No. 89-441

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ROSEMARY MENARD-SANFORD, *et al.*,
Petitioners,

v.

A.H. ROBINS COMPANY, INCORPORATED, *et. al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED*

This case arises out of a corporate reorganization by A.H. Robins Company (the "debtor") under Chapter 11 of the Bankruptcy Code, which established a mechanism for satisfying the claims of nearly two hundred thousand women who have been injured by the Dalkon Shield (the "creditors"), an intrauterine device sold by Robins. The courts below approved a reorganization plan creating a trust fund from which the claimants may seek com-pensation. The plan provides that the trust fund is the exclusive source of compensation, and enjoins the creditors from suing Robins' officers, attorneys and other third parties (the "third parties") who allegedly engaged in a conspiracy to suppress information relating to the dangers posed by the Dalkon Shield. The question presented for review is whether:

In a corporate reorganization under the Bankruptcy Code, does a bankruptcy court have the power to enjoin creditors from pursuing additional remedies against third parties who are independently liable to the creditors, where those third parties are not debtors in any bankruptcy proceeding and where the fund created in the reorganization may not be sufficient to pay all creditors in full?

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*In addition to the named petitioner Rosemary Menard-Sanford, the other petitioners are 668 individual claimants who also appealed the order confirming the reorganization plan of respondent A.H. Robins Company, Inc. All of those who were appellants are listed at the conclusion of the opinion of the court of appeals. 20a-38a. Those who have asterisks next to their names have not joined this petition, and hence are respondents in this Court. The other respondents, who were appellees below, include four entities designated by the bankrupcy court — the Creditors' Committee, the Dalkon Shield Claimants' Committee, the Equity Security Holders' Committee, and the Future Claimants' Representative (Stanley K. Joynes, III) — and the court-appointed examiner, Ralph R. Mabey.

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OPINIONS BELOW

The opinion of the court of appeals is reported and appears in the separately bound appendix at 1a -38a at 880 F. 2d 694 . The memorandum of the district court is reported at 88 B.R. 742 (1988) and appears at 55a-82a. The order of confirmation is unreported and appears at 39a-54a .

JURISDICTION

The judgment of the court of appeals was entered on June 16, 1988. 83a-89a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTE

Section 524(e) of the Bankruptcy Code of 1978, Pub. Law 95-598, 92 Stat. 2593, 11 U.S.C. § 524(e), provides as follows:

> Except as provided in subsection (a)(3) of this section [relating to spousal debts], discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

STATEMENT OF THE CASE

On August 21, 1985, respondent A.H. Robins Company, Inc. ("Robins") sought refuge under Chapter 11 of the Bankruptcy Code because of the pendency of thousands of lawsuits against it by women who had been injured by Robins' intrauterine contraceptive device known as the Dalkon Shield. Nearly three years later, the district court, which had jurisdiction under 28 U.S.C. § 1334, approved a reorganization plan under which the Robins' shareholders will receive $700,000,000 in stock of American Home Products ("AHP"), while approximately 195,000 Dalkon Shield victims will be relegated to seeking recovery for their injuries from a trust fund, which, although quite substantial, may be inadequate to satisfy in full all of the Dalkon Shield claims. Indeed, it was precisely because of the risk of underfunding that AHP and Robins insisted upon a ceiling on the damages payable to Dalkon Shield victims. As a result of the plan, the entire risk of inadequate funding has been transferred from Robins' shareholders to Dalkon Shield victims, even though those shareholders will receive AHP stock that is more than 3 1/2 times as valuable as their Robins stock was when the company filed for bankruptcy.

Despite petitioners' serious misgivings about the fairness of the plan and the legality of the method by which it was approved,

at this point they object only to one element of the plan: the injunction barring Dalkon Shield victims from suing Robins' officers and other third parties who are alleged to be joint tortfeasors with Robins. The lower courts upheld this injunction even though the third parties are not debtors under the Bankruptcy Code in this or any other proceeding, the fund may well be inadequate to pay the Dalkon Shield victims in full, and the victims will never have their day in court against these alleged tortfeasors. In order to understand how vital the removal of that injunction is to Dalkon Shield victims, we briefly review the proceedings that led to the plan and then turn to the rationales given by the lower courts to sustain the injunction.

1. Preliminary Proceedings

Robins filed under Chapter 11 to halt thousands of actual and anticipated Dalkon Shield suits pending against it and to enable it to develop a plan to pay for the claims. A major problem was that Robins did not know how many claims might be filed and what amount of damages might have to be paid. Six thousand lawsuits were then pending against it, but the company's greatest potential liability related to injuries caused by Dalkon Shields for which claims had not yet been filed. To gather the necessary information in order to formulate a reorganization plan, a three step process evolved.

First, the court established a bar date for the filing of all claims in order to ascertain the maximum number of eligible claimants (12a). Second, the court sent out a questionnaire to all those who filed claims to gather specific information as to each claimant's injuries (12a -13a). Third, a very detailed questionnaire was sent to approximately 6000 claimants, from which a data base concerning pending claims was prepared.

Using this and other information, the district court held a week-long hearing in November 1987 for the purpose of estimat-

ing the total amount of unliquidated Dalkon Shield claims. Although all parties who participated in the estimation hearing used the same raw data, there was a great divergence in the range of estimates for the total figure. Thus, Robins estimated that the total claims would amount to between $800 million and $1.3 billion; the Equity Security Holders' Committee placed the estimate at $1.03 billion; Aetna Life and Casualty Company — Robins' insurer — gave a figure of between $2.2 and $2.5 billion; and the Dalkon Shield Claimants' Committee provided an estimate of $4.2 billion to $7 billion (63a - 64a).

One reason for these vast differences is that the final figure necessarily incorporated a large number of subsidiary assumptions and determinations. First, the number of women with viable claims had to be estimated, implicating such variables as how many claimants would be eligible and how many would actually seek compensation? Second, the injuries had to be divided into different categories and reasonable ranges of dollar recoveries had to be assigned to each. Those injuries varied in severity from major birth defects and loss of child-bearing capabilities on one end, to minor short-term pelvic inflammation on the other. Third, estimates had to be made of the number of claimants who would fall into each category. Only after those and other subsidiary questions were answered was it possible to obtain a rational estimate for the total claims of all Dalkon Shield victims as a group.

No one suggested that anything but "estimates" could be made for the total or any of its components. But while neither mathematical precision nor a detailed set of figures that would add up to an indisputably correct total was expected, it was plainly reasonable to anticipate not only a total figure, but subtotals for the various components (probably with ranges of figures), together with an explanation of the assumptions used in deriving these components to reflect the major variables. However, the district court simply announced at the conclusion of the

estimation hearing that a payment of "$2.475 billion, payable over a reasonable period of time" would be sufficient to pay all Dalkon Shield claims and related expenses (64a). Despite petitioners' repeated requests for a breakdown of the total, no further explanation was ever provided.

With this figure in hand, Robins was in a position to effect a merger as a means of reorganizing the company. In February 1988, it reached agreement with AHP on a deal, which, for Dalkon Shield victims, had two essential elements. First, a fund was to be created in an amount necessary to satisfy the district court's estimate of $2.475 billion dollars, payable over a reasonable period of time, and that fund was to be the exclusive source of payment to Dalkon Shield victims. Thus, under the plan, neither Robins, which was to go out of existence, nor AHP, nor the subsidiary of AHP into which Robins was to be merged, would have any potential liability after the creation of the fund. This cap on victims' recovery, equal to the amount of the fund, was vital to the management and shareholders of Robins and AHP because everyone recognized that there was a substantial risk that the fund might not be sufficient to pay all the claimants in full. The cap actually chosen was highly beneficial to Robins' stockholders because it assured them $700 million in AHP stock, with no chance of that amount being diminished because of judgments in excess of the fund.

Second, the plan contained a provision, to be implemented by an order of the bankruptcy court, barring all Dalkon Shield victims from suing non-bankrupt third parties for their injuries, even if the fund proved to be insufficient to pay all victims in full.[1] This provision was included because of a fear that many of the victims would assert claims against high officials of

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[1]The plan does not bar suits against doctors, hospitals, and other health care providers for independent acts of negligence.

Robins and the lawyers and law firms representing Robins and its insurer Aetna, based on allegations that these third parties conspired to cover up the cause of the injuries resulting from use of the Dalkon Shield, after the cause was well known to them. Such claims, which included allegations that some of those persons committed perjury, destroyed incriminating documents, and otherwise obstructed justice, are independent of any liability that Robins has for selling defective Dalkon Shields. Thus, the victims contended that, as a result of the conspiracy to suppress this vital safety information, the factual support for which is more fully discussed *infra* at 14-15, Dalkon Shields were not removed from thousands of women, and therefore many women suffered serious bodily injuries that would have been avoided if the truth about the dangers of the Shield had not been suppressed. None of these alleged conspirators who benefit from the injunction was a debtor in this or any other proceeding under the Bankruptcy Code, and, with the exception of Aetna, against which a separate action had been brought, none of them was a defendant in a pending suit by a Dalkon Shield claimant. Nonetheless, the effect of this part of the plan was to release all of these third parties from any potential liability to any of the victims, even if the fund proved insufficient to pay the claims in full. Among the principal beneficiaries of this provision are E. Claiborne Robins Sr. and E. Claiborne Robins, Jr., whose families together own 42% of Robins' stock.[2]

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[2]Aetna is also alleged to be a co-conspirator with these individuals, but Aetna was a defendant in a class action that was settled at the same time that the plan was confirmed, and which was decided by the Fourth Circuit on the same day as this case. *See Breland v. Aetna Casualty & Surety Co.*, Nos. 88-1755, 88-1766 ,88-3604, and 88-1757. The court of appeals captioned its opinion "In Re A.H. Robins Company, Incorporated" even though Robins was never a party to that case. A petition for a writ of certiorari is being filed in *Breland* under the caption *Anderson v. Aetna Casualty & Surety Co*. The relation between the two cases is discussed in the *Anderson* petition at 10-11, 15 & N6.

2. Decisions Below

In order to confirm the reorganization plan, the district court had to approve a disclosure statement explaining the plan to all creditors. The creditors in each class then had to vote to approve the plan, and the district court had to make findings that the plan met all the requirements of the Bankruptcy Code.

On July 18, 1988, the district court held a one-day confirmation hearing on the plan. At the outset of the hearing, Robins provided the vote totals indicating that all classes of creditors, including the Dalkon Shield claimants, had approved the plan by wide margins (71a). A week later the court issued its order approving the plan, along with an accompanying memorandum (39a, 53a). The memorandum set forth the history of the litigation and went through each of the Bankruptcy Code's requirements for confirmation, explaining briefly how they had been satisfied. It did not, however, respond to the principal objections made both in writing and at the hearing, in particular those based on the court's failure to provide the breakdown of the component figures used to determine the total Dalkon Shield claims estimate. In addition, the court defended the injunction against third party actions on grounds of necessity (80a - 81a), without attempting to explain the basis for it under the Bankruptcy Code or how the victims could be deprived of a potential remedy without having their day in court against these third parties.

More than six months after oral argument, the court of appeals unanimously affirmed the decision below, just as it did in three other related cases decided the same day. Petitioners had challenged the plan's disclosure statement on the ground that it failed to include even estimates of the range of recoveries that Dalkon Shield victims might expect to receive, which was the most important information that they needed in deciding whether or not to support the plan. The court rejected that argument by claiming that "specific estimates may well have been more

confusing than helpful and certainly would be more calculated to mislead" — an assertion never made by the district court. (8a). Moreover, the court did not respond to petitioners' point that if the information were sufficiently reliable for the district court to use in estimating the total of all Dalkon Shield claims, then it surely was sufficiently reliable to be sent to claimants so that they could make a more informed choice about whether or not to approve the plan.

Petitioners also claimed that the district court violated 11 U.S.C. § 1126(c), which mandates weighted voting, by assigning the value of $1 to each Dalkon Shield claim, even though the figures offered by Robins at the estimation hearing for different categories of injuries ranged from $750 to $258,000, with by far the largest number of claimants bunched in the two categories having the lowest values. Instead of answering petitioners' legal argument, the court of appeals decided that any error was "harmless" (9a), in light of the overwhelming vote in favor of the plan, without explaining why it was entitled to make an essentially factual finding never attempted by the district court. Petitioners also objected to the failure of the district court to break out the components of the $2.475 billion figure (10a), making it impossible for them to challenge it at the hearing or on appeal. The court overruled that objection by doing precisely what petitioners alleged the district court should have done, but failed to do: explain in detail one way that the court could have arrived at that $2.475 billion total.

Finally, on the validity of the injunction against suing third parties, the court declined to adopt the reasoning of Robins (and the similar approach of the district court) (14a), but instead began by discussing its decision in *Breland*, issued the same day, in which only Aetna, and not Robins or any other person who was potentially liable, was a defendant. According to the court, as a result of its affirmance in *Breland*, "the injunction complained of has no real effect on the rights of class A [which includes

petitioners and all other claimants who filed on time] and the members of Class B who have not exercised their right to opt-out" (16a). While it is true that the affirmance in *Breland*, if upheld by this Court, would have such an effect on all claims against Aetna, the court cited nothing in the record to support its assertion that *Breland* had any bearing whatsoever on the claims of petitioners against persons other than Robins or Aetna who were not parties either to *Breland* or to this bankruptcy proceeding.[3]

The court also sought to defend its decision on a variety of other grounds, including that bankruptcy courts are courts of equity (17a), without explaining how that doctrine can insulate persons not before the bankruptcy court. Eventually, the court reached petitioners' principal allegation that 11 U.S.C. § 524(e) prohibits the injunctions because, with an exception not relevant here, it provides that "discharge of the debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." After referring to two contrary authorities cited to it by petitioners, the court quoted *dicta* from *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1050 (5th Cir. 1987) (18a), that suggested a possible narrowing construction of the plain language of section 524(e), but which did not adopt that construction because it found against the challenging party on other grounds. Nonetheless, the Fourth Circuit found "the language used by the Fifth Circuit persuasive" (19a), and concluded that it did not believe that section 524(e) "must be literally applied in every case as a prohibition on the power of the bankruptcy courts [to issue injunctions barring suits against third parties], as appellants would have us apply it here" (*id*). It then asserted that this case was distinguishable from those cited by

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[3]Much of the court's discussion focuses on claimants who are in Class B in *Breland* because they filed late claims in the reorganization proceeding. However, since petitioners all filed timely claims, that discussion is irrelevant to this case.

petitioners because here the plan was overwhelmingly approved and it "gives a second chance for even late claimants to recover" a factor that does not help petitioners, all of whom filed on time.

Finally, the court relied on the central element of the district court's apparent rationale of "authority by necessity."(180a-81a) that appears to occupy a similar place in the court of appeals' ruling: the injunction is valid because "the entire reorganization hinges on the debtor being free from indirect claims such as suits against parties who would have immunity or contribution claims against the debtor . . ."19a. In those circumstances, the court concluded, "the equitable power of the bankruptcy court to enjoin the questioned suits" was not limited by section 524(e), even though these third parties were not before the bankruptcy court in this or any other proceeding. (*Id.*).

REASONS FOR GRANTING THE WRIT

THE RULING BELOW CONFLICTS WITH DECISIONS OF THREE COURTS OF APPEALS AND PRESENTS AN IMPORTANT QUESTION UNDER THE BANKRUPTCY CODE.

The court of appeals first attempted to defend the injunction against third party suits on the ground that, because all the claimants would be paid in full, they would not be harmed. If that premise were correct, it might justify this Court in declining to hear the case, or it might be a basis for denying relief in a suit against a third party, but it would not provide any basis for validating an order which the district court had no power to issue in the first place.

But it is plain that the court of appeals' assumption that there is a guarantee of full payment is in error. As the plan and disclosure statement, including a portion previously cited by the

court of appeals itself make clear, there is a substantial likelihood that all the Dalkon Shield victims will not be paid in full, and that, therefore, suits against third parties may be the only way in which to make the claimants whole. Indeed, Robins' insistence on the injunction eliminating possible suits against third parties, who include officers and attorneys for Robins, as part of the plan, underscores the substantial risk of nonpayment, which the plan placed entirely on the claimants. And the fact that the court of appeals went on to offer other reasons to sustain the injunction confirms the view that even the court was not convinced that the objections to the injunction were purely theoretical and would have no impact on the ability of the victims to collect their claims in full.

The court of appeals recognized (18a) that two other circuits have construed section 524(e) to forbid bankruptcy courts, as part of corporate reorganizations, from eliminating the liability of third parties, such as their corporate officers, for debts for which the corporation is principally liable. *See Underhill v. Royal*, 769 F.2d 1426, 1432 (9th Cir. 1985), and *Union Carbide Corp. v. Newboles*, 686 F.2d 593 (7th Cir. 1982); *see also United States v. Stribling Flying Service, Inc.*, 734 F.2d 221, 223 (5th Cir. 1984) (denying protection to corporate guarantors and discussing pre-1978 cases to same effect). But the Fourth Circuit then relied on *dicta* from the Fifth Circuit's opinion in *Republic Supply Co.*, suggesting that section 524(e) was not as firm as the rulings in the other cases suggested, and it forged an exception based on three factors, not appearing in the statute or in any other authority: the overwhelming vote in favor of the plan, the fact that late claimants are given a second chance, and the assertion that the success of "the entire reorganization hinges on" the inclusion of the injunction (19a). Because that construction of section 524(e) departs from settled law and creates a conflict in the circuits, as well as an enormous loophole through which nondebtors could readily pass and be financially cleansed in the

process, this Court should grant review.

Despite the efforts of the Fourth Circuit to avoid the conflict by asserting that it would "leave questions concerning cases in which § 524(e) does apply for another day" (19a), the conflict is direct because the other cases are identical in all relevant respects. Either bankruptcy courts have the power to eliminate the liability of third parties who are not before the court and who have never been sued on these claims by the creditors of a bankruptcy estate, or they do not. *Underhill* and *Union Carbide* are clear that section 524(e) specifically denies bankruptcy courts that power. A third case cited to the court of appeals by petitioners, but not mentioned by it, *United States v. Huckabee Auto Co.*, 783 F.2d 1546 (11th Cir. 1986), is even more directly on point. There the debtor owed social security and withholding taxes that were scheduled to be paid in full to the Internal Revenue Service as part of the reorganization. Nonetheless, the IRS also assessed two of the company's officers for the unpaid taxes under 26 U.S.C. § 6672, but the bankruptcy court enjoined the IRS from collecting on those assessments on the ground that "payment of the penalty [under § 6672] would adversely affect the corporate debtor's efforts to reorganize." *Id.* at 1547. However, both the district court and the court of appeals overturned that injunction on the grounds that section 524(e) denies the bankruptcy court the power to eliminate such liabilities—precisely the power which the court of appeals upheld here.[4]

Beyond these stark conflicts, the rationales offered by the court of appeals are either irrelevant or would create an excep-

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[4]Two other courts of appeals have also denied bankruptcy courts the power to enjoin the IRS from collecting taxes under section 6672, albeit in different procedural settings and based on different rationales. *In Re Brandt-Airflex Corp.*, 843 F.2d 90 (2d Cir. 1988); *Matter of La Salle Rolling Mills, Inc.*, 832 F.2d 390 (7th Cir. 1987). *But see id.* at 392 n.6, questioning the government's expansive reading of *Huckabee*, *supra*.

tion that would swallow section 524(e). Thus, the fact that a high percentage of claimants voted in favor of a plan cannot increase the power of the bankruptcy court to issue an injunction not authorized by Congress. Even if those claimants who did not object are barred from suing third parties, on a theory of consent like that adopted in *Republic Supply*, *supra*, that theory would be irrelevant for petitioners who vigorously opposed the injunction in both the district court and the court of appeals.

The final ground asserted by the court — that "the entire reorganization hinges on the debtor being free from indirect claims" — is precisely the argument rejected by the Eleventh Circuit in *Huckabee*, *supra*, as "irrelevant." 683 F.2d at 1549. Indeed, the rationale of the Fourth Circuit has no limiting principles, since in almost any case the debtor could plausibly assert that the reorganization "hinges" on such an injunction. Thus, even if there were no conflict, the validity of the rationale offered for this exception to section 524(e) would present a sufficiently important question to merit this Court's consideration.

Three other factors further support review. First, the effect of the injunction is to deny Dalkon Shield victims the opportunity ever to go to court against third parties who were not part of this or any other bankruptcy proceeding. Such a denial would deny the claimants a property right without due process of law. *See Martin v. Wilks*, 109 S. Ct. 2180 ,2184 (1989), and *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985). Indeed, the Third Circuit recently held that it would violate due process for a federal court in Pennsylvania to enjoin Arizona claimants from pursuing their claims in Arizona state courts, even though the claimants had unsuccessfully attempted to opt out of the class certified by the Pennsylvania court and the settlement of the Pennsylvania action had been upheld on appeal. *In Re Real Estate Title & Settlement Services Antitrust Litigation*, 869 F.2d 760 (1989), *cert. pending sub nom, Chicago Title Insurance Co.*

v. Tuscon Unified School District, No. 88-2050, filed June 15, 1989. In light of these decisions, it would surely offend due process to allow a bankruptcy court to wipe out independent causes of actions that creditors have against parties who are not before the bankruptcy court, solely because the creditors filed a claim in the bankruptcy proceeding. Therefore, section 524(e) should not be construed to authorize any such unconstitutional deprivation in the absence of the clearest indication that Congress intended to do so. *See NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 507 (1979).

Second, although the injunction provision of the reorganization plan specifically excluded Aetna, that exclusion was entirely gratuitous under the theory adopted by the court of appeals. Thus, if potential lawsuits by Dalkon Shield victims against officers, directors, and attorneys of Robins can be eliminated before they have even been filed, there is no reason why similar claims against Aetna could not have been obliterated in the same way. If a bankruptcy court has the power in one situation, surely it has the power in the other. The scope of this breath-taking addition to the power of the bankruptcy court is a further reason why this Court should grant review on the legality of this injunction.

Third, the injunction is likely to have significant practical impact on the ability of Dalkon Shield claimants to recover fully on their claims, because there is solid evidence to support the conspiracy and the putative defendants would be in a position to make substantial payments. As to the evidence, the Court need look no further than the petition for a writ of certiorari filed by Robins in an attempt to block a grand jury subpoena involving the same conspiracy that is immunized by the plan's injunction. *In Re Grand Jury Proceedings, Company X v. United States*, No.

88-1243, *cert. denied*, 109 S.Ct. 3214 (1989).[5] Based on an *in camera* submission, which included a sworn declaration of a Justice Department attorney and grand jury exhibits and testimony, *id.* at 10a, plus the rulings of other judges in other cases involving Robins, the district court found that there is "a strong *prima facie* showing that [Company X] and its employees and officers participated in the commission of crimes and fraud during the promotion, marketing and sale of [the Product], and used its attorneys to perpetuate and cover up the ongoing crimes and fraud during the ensuing product liability litigation through the commission of frauds on the court, obstruction of justice and perjury." *Id.* at 11a (brackets in petition). *See also* Brief in Opposition of United States in 88-1243, at 2 (listing crimes under investigation) and 3 (reciting representation by Justice Department attorney that evidence before grand jury showed that Robins "had been engaged in ongoing criminal and fraudulent activity for roughly 15 years and had used its attorneys to further and cover up these illegal activities in the nationwide product liability litigation.") It is the civil damages caused by the criminal activity of those individuals that the injunction immunizes.[6]

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[5]There is no doubt that "Company X" is Robins. Aside from X's own description of the background of the case set forth on pages 2-5 of its petition, the district court opinion refer to other cases where similar conclusions of wrongdoing were reached as support for its finding that an exception to the attorney-client privilege existed. Pet. App 10a-11a. The court then cited those decisions in its opinion. While X redacted the name of the company in those cites, the reported decisions themselves, which it did cite, contain the name A.H. Robins, resolving any doubt about the identity of Company X.

[6]A detailed discussion of the Robins' coverup is also contained in the lengthy opinion of the Kansas Supreme Court upholding substantial actual and punitive damages in *Tetuan v. A.H. Robins Co.*, 738 P.2d 1210 (Kan. 1987). After setting out the evidence, the court observed that no court "has ever been presented with corporate misconduct of such gravity and duration," *id.* at 1239, misconduct which can only have been undertaken by individuals, and not inanimate entities like corporations.

Nor is this a situation where the wrongdoers are judgment-proof. Two of the Robins' officers who are potential defendants are E. Claiborne Robins Sr. and E. Claiborne Robins Jr., whose families own 42% of Robins' stock. If the plan is implemented, that interest alone will be worth roughly $300 million. While the lawyers and law firms who are alleged co-conspirators may not be as well-off financially, they and their insurance carriers can surely make significant contributions toward compensating the victims for their injuries. But unless the injunction is lifted, no victim will ever have her day in court against those individuals whose criminal activities caused so many women serious personal injuries. That result, which the Fourth Circuit approved, should not go unreviewed by this Court.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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